

## **RIGHT-OF-WAY FOR UTILITY SYSTEMS**

### **Version 6.7 (Leased/Water)—4 September 2002**

**This form right-of-way is designed for use in utility privatization actions on land held under lease or where the utility system is located on both leased and fee-owned lands. These typically include Air National Guard and Air Force Reserve locations at civilian airfields. It should be used without change other than filling in the identified spaces. There may be necessary installation specific alterations, particularly in Attachment 1. Such alterations should not change the substantive provisions without consulting with SAF/GCN. Requests for deviations should be conveyed through AF/ILEIO. Recommended improvements to the document should be conveyed to SAF/GCN directly.**

**This version includes several changes to Version 5. In addition, the conditions have been reorganized under general subject matter headings and an automated table of contents added. Lastly, to the extent possible, fill-in blanks have been eliminated.**

**To promote convenience for the users, separate versions have been prepared for each type of utility system and for fee-owned lands and leased (or combined leased/fee-owned) lands. Consequently, there will be eight versions, although they will be substantially similar. For reference purposes, they will be numbered as follows:**

- 6.1 (Fee/Electric)**
- 6.2 (Fee/Gas)**
- 6.3 (Fee/Water)**
- 6.4 (Fee/Wastewater)**
- 6.5 (Leased/Electric)**
- 6.6 (Leased/Gas)**
- 6.7 (Leased/Water)**
- 6.8 (Leased/Wastewater)**

**Fill-in blanks are located at the top of the Table of Contents, the Title, the Preamble, in Conditions 1, 3, 4.1, 18.2, and 19 (required deletion), and in the signature blocks. Additional information must also be added to the Exhibits. Although the narrative provisions of Exhibit B should not be changed, the tables containing the various diagrams should be updated as new drawings are provided. Please keep in mind that the right-of-way stands alone. It does not incorporate other portions of the request for proposals (RFP). For instance, the RFP attachment delineating the inventory of the system is for use in the Bill of Sale; it does not also apply to the right-of-way. The difference is that the Bill of Sale needs an inventory of what is being sold, while the right-of-way needs a description of the extent of the system covered by the right-of-way. Exhibits A and B provide that description of the extent of the system.**

**This cover page should be deleted when the Right-of-Way is inserted into the request for proposals.**

**DEPARTMENT OF THE AIR FORCE GRANT OF RIGHT-OF-WAY TO *(Name Of Grantee)* FOR PROPERTY  
LOCATED ON *(Name Of Installation)***

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**DEPARTMENT OF THE AIR FORCE**  
**GRANT OF RIGHT-OF-WAY**  
**To *(Name Of Grantee)***  
**FOR PROPERTY LOCATED ON**  
***(Name Of Installation)***

**PREAMBLE**

**THE SECRETARY OF THE AIR FORCE**, hereinafter referred to as “Grantor”, acting under the authority of 10 U.S.C. § 2688, hereby grants to *(name of Grantee)*, hereinafter referred to as “Grantee”, a corporation organized and doing business under the laws of the State of *(insert name of state)*, a Right-of-Way for operation of a utility system for the treatment and supply of water at *(name of installation)*, the areal extent of which Right-of-Way is identified in **EXHIBITS A and B**, both attached hereto and made a part hereof, hereinafter referred to as the “Premises”. While the Premises contain the utility system, the utility system is not part of the Premises; the utility system is the property of Grantee. Grantor and Grantee, when referred to together, are hereinafter referred to as the “Parties”, and may be referred to in the singular as a “Party”. For purposes of this Right-of-Way, Grantor includes the United States Government and the Department of the Air Force. This Right-of-Way grants to Grantee the right and privilege to operate its utility system located on *(name of installation)* (hereinafter

referred to as “Installation”), including construction, installation, repair, and maintenance of its system. Some or all of the Premises are not the property of the United States, but are leased by the United States from the (*insert Lessor’s name*), hereinafter referred to as “Lessor”. Any grant under this Right-of-Way made by Grantor extends no further than Grantor’s rights in the Premises.

**THIS RIGHT-OF-WAY** is granted subject to the following conditions.

## **BASIC TERMS**

### **1. TERM**

**1.0.** This Right-of-Way shall be effective beginning on \_\_\_\_\_, 200\_, and shall remain in effect for a period co-extensive with the Department of the Air Force land lease, Number (*insert lease number*), between Lessor and the United States of America, dated (*insert date of lease*), as it may be amended from time to time, unless sooner terminated by Grantor or by abandonment. At the end of its full term, if the Lessor and the United States renew, extend, or replace the expiring lease with a new lease not inconsistent with the terms of this Right-of-Way, this Right-of-Way shall be renewed for an additional period, co-extensive with the renewed, extended, or replaced lease, subject to agreement between the Parties on the payment of consideration at least equal to the fair market value of the renewed right-of-way. The obligations of Grantee, including those regarding remediation of environmental contamination and removal of structures, facilities, and equipment installed or owned by Grantee, shall remain in effect after the expiration, termination, or abandonment of this Right-of-Way unless otherwise agreed to by the Parties.

### **2. CONSIDERATION**

**2.0.** Grantee shall pay to Grantor consideration at least equal to the fair market value of this Right-of-Way; that consideration is included in the Bill of Sale for the utility system of even date with this Right-of-Way.

### 3. CORRESPONDENCE

**3.0.** All correspondence to be sent and notices to be given pursuant to this Right-of-Way shall be addressed, if to Grantor, to *(insert installation office address)*, and, if to Grantee, to *(insert Grantee's address)*, or as may from time to time otherwise be directed by the Parties. Notice shall be deemed to have been duly given if and when enclosed in a properly sealed envelope or wrapper addressed as aforesaid, deposited, postage prepaid, and postmarked in a post office regularly maintained by the United States Postal Service.

### 4. ACCESS

**4.1.** The use, operation, and occupation of the Premises shall be without cost or expense to the Department of the Air Force, and are subject to the general supervision and control of the Commander, *(organization)*, or his duly authorized representative, hereinafter referred to as "said officer".

**4.2.** In accepting the privileges and obligations established hereunder, Grantee recognizes that the Installation serves the national defense and that Grantor will not permit the operation, construction, installation, repair, and maintenance of a utility system and the provision of utility services to interfere with the Installation's military mission. This Installation is an operating military installation which is closed to the public and is subject to the provisions of the Internal Security Act of 1950, 50 U.S.C. § 797. Access to the Installation is subject to the control of its commanding officer and is governed by such regulations and orders as have been lawfully promulgated or approved by the Secretary of Defense or by any designated military commander. Any access granted to Grantee, its officers, employees, contractors of any tier, agents, and invitees is subject to such regulations and orders. This Right-of-Way is subject to all regulations and orders currently promulgated or which may be promulgated by lawful authority as well as all other conditions contained in this Right-of-Way. Violation of any such regulations, orders, or conditions may, in the discretion of said officer, result in the termination of this Right-of-Way. Such regulations and orders may, by way of example

and not by way of limitation, include restrictions on who may enter, how many may enter at any one time, when they may enter, and what areas of the Installation they may visit. Grantee is responsible for the actions of its officers, employees, contractors of any tier, agents, and invitees while on the Installation and acting under this Right-of-Way. Grantee is responsible for the costs of complying with these regulations and orders, including, if necessary, background investigations of its employees required to obtain a security clearance.

**4.3.** In the event all or any portion of the Premises shall be needed by the United States or in the event the presence of Grantee's property shall be considered detrimental to governmental activities, Grantee shall, from time-to-time and upon notice to do so, and as often as so notified, remove or relocate its property to such other location or locations on the Premises (or substitute land of Grantor which shall then become part of the Premises) as may be designated by said officer, and in the event Grantee's property shall not be removed or relocated within ninety (90) days after any aforesaid notice, the Grantor may cause the same to be done. Condition 4.1 notwithstanding, any removal or relocation of Grantee's property at the direction of the Grantor under this Condition 4.3 shall be at Grantor's expense.

**4.4.** Grantee further recognizes that the operation, construction, installation, repair, and maintenance of the utility system on the Installation may be subject to requirements and approvals not ordinarily imposed by civilian authorities. Grantee agrees to abide by all applicable regulations and to obtain all required approvals as specified in this Right-of-Way or as directed by said officer.

**4.5.** Utility poles, buried conduits, pipes, tubes, wires, and other utility systems and pieces of equipment on the Installation may be the property of a non-federal entity. In that case, use of those poles, conduits, pipes, tubes, wires, or other utility systems and pieces of equipment will be subject to separate agreement between Grantee and the owner of the poles, conduits, pipes, tubes, wires, or other utility systems and pieces of equipment. Access will still be governed by this Right-of-Way but may also be subject to conditions, including payment of a fee, required by the owner of the poles, conduits, pipes, tubes, wires, or other utility systems and pieces of equipment.

**4.6.** The Grantor may, during the term of this Right-of-Way, sell existing poles, conduits, pipes, tubes, wires, or other utility systems and pieces of equipment to a private or public entity. In such an event, Grantee's rights under this Right-of-Way will not extend to disturbing or damaging the property of other entities who also hold grants of rights-of-way on the Installation, and any operation, construction, installation, repair, or maintenance by Grantee that disturbs or damages the property of such other entities shall be the responsibility of Grantee and Grantee shall be liable to such other entities for any disturbance or damages to their property caused by Grantee's actions.

## **5. TERMINATION**

**5.1.** This Right-of-Way may be terminated, in whole or in part, by the Grantor for (1) failure to comply with the terms of the Right-of-Way as determined under Condition 6, or (2) abandonment. This Right-of-Way shall terminate without further action or notice on the part of the Parties if Grantee abandons its privileges under this Right-of-Way; abandonment shall occur if Grantee fails to utilize the Premises, or any part of them, to provide services to customers for a period of one year; given good cause, Grantor may, on a case by case basis, extend this one year period. Abandonment of a part of the Premises shall only apply to that part of the Premises abandoned. Any termination in accordance with this Condition 5 shall not create any liability on the part of Grantor for Grantee's capital costs, anticipated profits or fees, and costs of construction, installation, maintenance, upgrade, and removal of facilities, and such costs and anticipated profits or fees will not be recoverable from Grantor under this Right-of-Way.

**5.2.** This Right-of-Way does not guarantee that the Installation will remain open or active at its current level. The number of potential customers may change from time to time depending on military requirements. Such change is part of the risk Grantee assumes. Subject to Condition 22.2, this Right-of-Way is not exclusive in that Grantor may also grant like privileges to others, including Grantee's competitors. Closure of the Installation, reduction in the level of activity at the Installation, change in the number of potential customers, Grantor's granting like privileges to others, including Grantee's



competitors, and Grantor's allowing alternative forms of utility service will not constitute termination of this Right-of-Way for convenience of the Grantor and creates absolutely no obligation on the part of Grantor to reimburse Grantee for any anticipated profits or fees. Grantee acknowledges that it is solely responsible for all capital costs, anticipated profits or fees, and costs of operation, construction, installation, maintenance, upgrade, and removal of facilities, and that such costs and anticipated profits or fees will not be recoverable from Grantor under this Right-of-Way.

## **6. DEFAULT**

**6.1.** The following shall constitute a default and breach of this Right-of-Way by the Grantee: The failure to comply with any provision of this Right-of-Way, where such failure to comply continues for ten (10) days after delivery of written notice thereof by the Grantor to the Grantee. If, however, the time required to return to compliance exceeds the ten (10) day period, the Grantee shall not be deemed to be in default or breach if the Grantee within such period shall begin the actions necessary to bring it into compliance with the Right-of-Way in accordance with a compliance schedule acceptable to the Grantor.

**6.2.** In the event of any default or breach of the Right-of-Way by the Grantee, the Secretary of the Air Force may terminate this Right-of-Way at any time after expiration of the cure period provided for in Condition 6.1 upon written notice of the termination to the Grantee. The termination notice shall be effective as of a day to be specified therein, which shall be at least seven (7) but not more than thirty (30) days after its receipt by the Grantee.

**6.3** Termination for default under this Condition 6 extends only to termination of this Right-of-Way and does not constitute cancellation of the Bill of Sale for the utility system of even date with this Right-of-Way, except to the extent this Right-of-Way is a part of said Bill of Sale.

## **OPERATION OF THE PREMISES**

## **7. CONDITION OF PREMISES**

**7.0.** Grantee has inspected and knows the condition of the Premises. It is understood that they are granted in an “as is, where is” condition without any warranty, representation, or obligation on the part of Grantor to make any alterations, repairs, improvements, or corrections to defects whether patent or latent. The Parties will jointly perform and sign a Physical Condition Report at the beginning of the right-of-way period. This report shall be attached hereto and made a part hereof as **EXHIBIT C**.

## **8. PROTECTION OF PREMISES**

**8.0.** As regards the Grantee’s use of the Premises and its property on the Premises, Grantee shall, at all times, protect, repair, and maintain the Premises in good order and condition at its own expense and without cost or expense to Grantor. Grantee shall exercise due diligence in protecting the Premises against damage or destruction by fire, vandalism, theft, weather, or other causes. Any property on the Premises damaged or destroyed by Grantee incident to the exercise of the privileges herein granted shall be promptly repaired or replaced by Grantee to the satisfaction of said officer.

## **9. AIR FORCE PROPERTY**

**9.1.** Any interference with the use of or damage to property under control of the Department of the Air Force, including uses described in Condition 9.2, incident to the exercise of the privileges herein granted shall be promptly corrected by Grantee to the satisfaction of said officer. If Grantee fails to promptly repair or replace any such property, said officer may repair or replace such property and Grantee shall be liable for the costs of such repair or replacement.

**9.2.** Grantor has property installed on or attached to the property of Grantee, including Grantee’s poles, conduits, pipes, ductbanks, tubes, towers, buildings, structures, or other utility systems and pieces of equipment. Grantor retains and reserves the right, at no cost to itself, to continue to use the property of Grantee to support such installed or attached property, including the right of Grantor to enter upon the Premises to

maintain, repair, operate, upgrade, and replace such installed or attached property. In the case of multiple use ductbanks, those ducts identified by Grantor in **EXHIBIT B** as being reserved for current or future Grantor use shall remain for the use of Grantor in accordance with this Condition 9.

## **10. RESTORATION OF PREMISES**

**10.0.** On or before (or, in the case of abandonment, after) the date of expiration of this Right-of-Way or its cancellation by agreement of Grantor and Grantee or its termination by the Secretary of the Air Force, Grantee shall vacate the Premises, remove its property therefrom, and restore the Premises to their original condition without expense to the United States. Such restoration shall include, if applicable, removal of contamination caused by Grantee. Grantor may, in its sole and absolute discretion, consent to Grantee abandoning all or part of its utility system on the Installation, but such consent must be unequivocal and in writing: Provided, however, that any buried conduits, pipes, ductbanks, tubes, or wires, the nature, location, and depth of which are known to Grantee and shown on Grantee's records in accordance with Condition 11.4, and which neither contain an environmental contaminant nor pose an environmental or safety hazard, may be abandoned with Grantor's consent, which consent shall not be unreasonably withheld. In regard to that portion of the Premises subject to the lease referred to in Condition 1, in the event that the United States terminates its activities on the Premises due to the expiration or other termination of the lease referred to in Condition 1, Grantee may, subject to the consent of Lessor, retain its property in place and continue its use under such terms as it and Lessor may agree: Provided, however, that such terms and such continued use shall be at no expense to the United States and shall not keep in effect this Right-of-Way.

## **11. ALTERATION OF PREMISES**

**11.1.** No additions to or alterations of the Premises shall be made without the prior written approval of said officer. Approval by Grantor will not be unreasonably withheld. Any and all operations, construction, installation, repair, and maintenance

activity of any type whatsoever must comply with this Right-of-Way and with its **Attachment 1**, attached hereto and made a part hereof. In the case of alterations to that portion of the Premises consisting of areas of restricted access under Condition 22.2, said officer may in his discretion grant blanket approvals in advance for certain specified categories of work.

**11.1.1.** Grantee may, after obtaining prior written approval of said officer, change the capacity of the utility system on the Premises but such change must be solely to better serve the Installation.

**11.1.2.** Should Grantee desire to change the capacity of the utility system on the Premises other than for the sole purpose of better serving the Installation, or to extend the utility system on the Installation but off the Premises, Grantor must first consent through an amendment of this Right-of-Way in accordance with Condition 27. Grantor has no obligation to consent to such an amendment and may require, in addition to other requirements, additional consideration.

**11.2.** Grantee shall neither place nor display advertising of any kind whatsoever on the Premises nor on its property located on the Premises, nor suffer any advertising of any kind whatsoever to be placed on its property located on the Premises.

**11.3.** If Grantee's property located on the Premises intrudes into airspace subject to regulation under the Federal Aviation Regulations or their Air Force counterparts, such property shall be operated, constructed, installed, repaired, and maintained in conformance with such regulations.

**11.4.** Grantee shall maintain records showing the locations and nature of its property on the Premises. Such records shall be kept current by Grantee. Grantee will, at no cost to the Grantor, provide Grantor a copy of these records, along with any changes to them when those changes are made. For purposes of work upon the Premises by other than Grantee, upon request by Grantor, Grantee, within three business days, will mark the actual location of its property in a manner acceptable to said officer.

## **12. COSTS OF SERVICES**

**12.0.** As regards the Grantee's use of the Premises and its property on the Premises, Grantee will be responsible for all utilities, janitorial services, building maintenance, and grounds maintenance for the Premises without cost to the Department of the Air Force. The Air Force may, if its capabilities permit, consent to provide certain of these services to Grantee on a reimbursable basis.

## **ENVIRONMENT**

### **13. ENVIRONMENTAL COMPLIANCE**

**13.0.** In its activities under this Right-of-Way, Grantee shall comply with all applicable environmental requirements, and in particular those requirements concerning the protection and enhancement of environmental quality, pollution control and abatement, safe drinking water, and solid and hazardous waste. Responsibility for compliance with such requirements rests exclusively with Grantee, including liability for any fines, penalties, or other similar enforcement costs.

### **14. ASBESTOS AND LEAD-BASED PAINT**

**14.1.** Grantee will not make any improvements or engage in any construction on the Premises which contain asbestos-containing material (ACM), without prior approval of said officer; any such improvements or construction shall be done in compliance with all applicable Federal, state, interstate, and local laws and regulations governing ACM. Grantee will be responsible for monitoring the condition of its property containing ACM on any portion of the Premises for deterioration or damage. Grantee will be responsible, at its expense, for remediation of any ACM contained on or in its property which is disturbed or damaged by Grantee or is deteriorated and of any ACM on the Premises which is disturbed or damaged by Grantee during the term of this Right-of-Way.

**14.2.** Grantee will test any painted surface to be affected by any of its operation, construction, installation, repair, or maintenance activities to determine if the paint is

lead-based and will handle that surface in compliance with all applicable laws and regulations and at Grantee's expense.

## **15. SAFETY AND HAZARDOUS WASTE DISPOSAL**

**15.0.** Grantee, at its expense, shall comply with all applicable laws on occupational safety and health, the handling and storage of hazardous materials, and the proper handling and disposal of hazardous wastes and hazardous substances generated by its activities. Responsibility for the costs of proper handling and disposal of hazardous wastes and hazardous substances discovered on the Premises is governed by applicable law. The terms hazardous materials, hazardous wastes, and hazardous substances are as defined in the Federal Water Pollution Control Act, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, the Solid Waste Disposal Act, the Clean Air Act, and the Toxic Substances Control Act, and their implementing regulations, as they have been or may be amended from time to time.

## **16. HISTORIC PRESERVATION**

**16.0.** Grantee shall not remove or disturb, or cause or permit to be removed or disturbed, any historical, archaeological, architectural, or other cultural artifacts, relics, vestiges, remains, or objects of antiquity. In the event such items are discovered on the Premises, Grantee shall cease its activities at the site and immediately notify said officer and protect the site and the material from further disturbance until said officer gives clearance to proceed. Any costs resulting from this delay shall be the responsibility of Grantee.

## **17. INSTALLATION RESTORATION PROGRAM**

**17.1.** If the Installation has not been listed on the National Priorities List (NPL) under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, at the time this Right-of-Way is granted, but is listed subsequent to the granting of this Right-of-Way, Grantor will provide Grantee with a copy of any Federal

Facility Agreement (FFA) that is entered into between Grantor and the U.S. Environmental Protection Agency (USEPA), along with any amendments to the FFA when they become effective.

**17.2.** If the Installation has been listed on the NPL at the time this Right-of-Way is granted but no FFA has been entered into, Grantor will provide Grantee with a copy of any FFA subsequently entered into along with any amendments to the FFA when they become effective.

**17.3.** If the Installation has been listed on the NPL at the time this Right-of-Way is granted and an FFA has been entered into, Grantee acknowledges that Grantor has provided it with a copy of the FFA, with current amendments; Grantor will provide Grantee with a copy of any subsequent amendments thereto.

## **18. ACCESS FOR RESTORATION**

**18.1.** Nothing in this Right-of-Way shall be interpreted as interfering with or otherwise limiting the right of Grantor and its duly authorized officers, employees, contractors of any tier, agents, and invitees to enter upon the Premises for the purposes enumerated in Condition 18.3 and for such other purposes as are consistent with the provisions of the FFA or required to implement the Installation Restoration Program (IRP) conducted under the provisions of 10 U.S.C. § 2701, et seq. Grantee will provide reasonable assistance to Grantor to ensure Grantor's activities under this Condition 18 do not damage Grantee's property on the Premises.

**18.2.** The USEPA and State of *(state)*, including their subordinate political units, and their duly authorized officers, employees, contractors of any tier, and agents have the right, upon reasonable notice to Grantee and with Grantor's consent, to enter upon the Premises for the purposes enumerated in Condition 18.3 and for such other purposes as are consistent with the provisions of the FFA. Grantee will provide reasonable assistance to USEPA and the State to ensure their activities under this Condition 18 do not damage Grantee's property on the Premises.

**18.3.** Purposes:

**18.3.1.** To conduct investigations and surveys, including, where necessary, drilling, soil and water sampling, testpitting, testing soil borings, and other activities related to the IRP or the FFA;

**18.3.2.** To inspect field activities of the Air Force and its contractors of any tier in implementing the IRP or the FFA;

**18.3.3.** To conduct any test or survey required by the USEPA or the State relating to the implementation of the FFA or environmental conditions on the Premises or to verify any data submitted to the USEPA or the State by the Air Force relating to such conditions; or,

**18.3.4.** To conduct, operate, maintain, or undertake any other response or remedial action as required under or necessitated by the IRP or the FFA, including, but not limited to, monitoring wells, pumping wells, and treatment facilities.

## **19. ENVIRONMENTAL BASELINE**

**19.0.** If Grantor determines that an Environmental Baseline Survey (EBS) is required for this Right-of-Way, an EBS documenting the known history of the property with regard to the storage, release, or disposal of hazardous substances thereon shall be prepared by Grantee, in accordance with Grantor's standards and requirements, and that EBS will be attached hereto, or incorporated by reference, and made a part hereof as **EXHIBIT D**. If such an EBS is prepared, upon expiration, termination, or abandonment of this Right-of-Way, another EBS shall be prepared by Grantee, in accordance with Grantor's standards and requirements, which will document the environmental condition of the property at the end of Grantee's use of the Premises. The Parties will share equally the cost of that EBS. That EBS shall be attached hereto, or incorporated by reference, and made a part hereof as an Exhibit. The findings of the two EBSs will be used to settle factual aspects of claims for restoration of the Premises. Grantee is responsible for the costs of any environmental restoration necessitated as a result of its use of the Premises.

**[USE IN THE ALTERNATIVE IF AN EBS HAS ALREADY BEEN PREPARED—**  
If, prior to the issuance of this Right-of-Way, Grantor prepared an Environmental Baseline Survey (EBS) documenting the known history of the property with regard to the



storage, release, or disposal of hazardous substances thereon, that EBS is attached hereto, or incorporated by reference, and made a part hereof as **EXHIBIT D**. If such an EBS was prepared, upon expiration, termination, or abandonment of this Right-of-Way, another EBS shall be prepared by Grantee, in accordance with Grantor's standards and requirements, which will document the environmental condition of the property at the end of Grantee's use of the Premises. The Parties will share equally the cost of that EBS. That EBS shall be attached hereto, or incorporated by reference, and made a part hereof as an Exhibit. The findings of the two EBSs will be used to settle factual aspects of claims for restoration of the Premises. Grantee is responsible for the costs of any environmental restoration necessitated as a result of its use of the Premises.]

## **CHANGES IN OWNERSHIP OR CONTROL**

### **20. TRANSFER, ASSIGNMENT, LEASING, OR DISPOSAL**

**20.1.** Grantee shall not transfer, permit, license, assign, lease, or dispose of in any way, including, but not limited to, voluntary or involuntary sale, merger, consolidation, receivership, or other means (all referred to in this Condition 20 as "transfer"), this Right-of-Way or any interest therein or any property on the Premises, or otherwise create any interest therein, without the prior written consent of said officer. Such consent shall not be unreasonably withheld or delayed, subject to the provisions of Conditions 20.2 through 20.4.

**20.2.** Any transfer by Grantee shall be subject to all of the terms and conditions of this Right-of-Way and shall terminate immediately upon the expiration or any earlier termination of this Right-of-Way, without any liability on the part of Grantor to Grantee or any transferee. Under any transfer made, with or without consent, the transferee shall be deemed to have assumed all of the obligations of Grantee under this Right-of-Way. No transfer shall relieve Grantee of any of its obligations hereunder, except, in the case of an assignment, if Grantor explicitly agrees to relieve Grantee of its obligations

hereunder; provided, however, that in the case of an assignment, Grantor may, in its sole discretion, withhold consent to the assignment.

**20.3.** Grantee shall furnish said officer, for his prior written consent, a copy of each transfer Grantee proposes to execute. Such consent by said officer may include the requirement to delete, add, or change provisions in the transfer instrument as Grantor shall deem necessary to protect its interests. Consent to or rejection of any transfer shall not be taken or construed to alter, diminish, or enlarge any of the rights or obligations of either of the Parties under this Right-of-Way, nor form a basis for any cause of action against or liability of Grantor.

**20.4.** Any transfer instrument must expressly provide that—(1) the transfer and transferee are subject to all of the terms and conditions of this Right-of-Way; (2) the transfer shall terminate with the expiration or earlier termination of this Right-of-Way; and (3) in case of any conflict between this Right-of-Way and the transfer instrument, this Right-of-Way will control. A copy of this Right-of-Way must be attached to the transfer instrument.

## **21. LIENS AND MORTGAGES**

**21.0.** Grantee shall not engage in any financing or other transaction creating any mortgage upon the Premises, place or suffer to be placed upon the Premises any lien or other encumbrance, or suffer any levy or attachment to be made on Grantee's interest in the Premises under this Right-of-Way. On the date of its execution or filing of record regardless of whether or when it is foreclosed or otherwise enforced, any such mortgage, encumbrance, or lien shall be deemed to be a violation of this Condition 21 and constitute a failure to comply with the terms of the Right-of-Way.

## **22. OTHER GRANTS OF ACCESS**

**22.1.** This Right-of-Way is subject to all outstanding easements, rights-of-way, leases, permits, licenses, and uses for any purpose with respect to the Premises. Grantor shall have the right to grant additional easements, rights-of-way, leases, permits, and licenses, and make additional uses with respect to the Premises. However, any such

additional easements, rights-of-way, leases, permits, licenses, or uses shall not be inconsistent with the Grantee's use of the Premises under this Right-of-Way.

**22.2.** For those areas identified in **EXHIBIT B.3**, Grantor shall not grant any additional easements, rights-of-way, leases, permits, licenses, or other access. Grantor recognizes that these areas require restricted access and Grantee may take appropriate action to prevent unauthorized access to such areas. This Condition 22.2 will only apply to access by others than Grantor and will not limit any right of access by public authorities charged with the regulation of Grantee's activities or law enforcement.

### **23. REAL PROPERTY ACCOUNTABILITY**

**23.0.** Grantor may transfer real property accountability for the Premises to another federal agency. In such event, the federal agency assuming real property accountability will stand in the place of and become Grantor without altering, diminishing, or enlarging the rights and obligations of either Grantor or Grantee under this Right-of-Way.

### **24. REPORTING**

**24.0.** This Right-of-Way is not subject to 10 U.S.C. § 2662.

## **GENERAL PROVISIONS**

### **25. COMPLIANCE WITH LAWS**

**25.0.** Grantee shall comply with all applicable Federal, state, interstate, and local laws, regulations, and requirements. This may include the need for Grantee to obtain permits to operate its utility system. Grantor is not responsible for obtaining permits for Grantee nor for allowing Grantee to use permits obtained by Grantor.

### **26. AVAILABILITY OF FUNDS**

**26.0.** The obligations of Grantor under this Right-of-Way shall be subject to the availability of appropriated funds. No appropriated funds are obligated by this Right-of-Way.

## **27. AMENDMENTS**

**27.0.** This Right-of-Way may only be modified or amended by the written agreement of the Parties, duly signed by their authorized representatives.

## **28. LIABILITY**

**28.1.** Grantor shall not be responsible for damage to property or injuries to persons which may arise from, or be attributable or incident to, the condition or state of repair of the Premises, due to its use and occupation by Grantee. Grantee agrees that it assumes all risks of loss or damage to property and injury or death to persons, whether to its officers, employees, contractors of any tier, agents, invitees, or others, by reason of or incident to Grantee's use of the Premises, and its activities conducted under this Right-of-Way. Grantee shall, at its expense, pay any settlements of or judgments on claims arising out of its use of the Premises.

**28.2.** Grantee shall indemnify and hold harmless Grantor against any and all judgments, expenses, taxes, liabilities, claims, and charges of whatever kind or nature that may arise as a result of the activities of Grantee, whether tortious, contractual, or other, except where such claim or charge arises out of the grossly negligent conduct of Grantor or, in regard to indemnification, to the extent Grantee is prohibited from doing so by Federal or state law.

## **29. INSURANCE**

**29.1.** During the entire period this Right-of-Way shall be in effect, the Grantee, at no expense to the Grantor, shall carry and maintain and require its contractors of any tier performing work on the Premises to carry and maintain—

**29.1.1.** Comprehensive general liability insurance on an “occurrence basis” against claims for “personal injury,” including without limitation, bodily injury, death, or property damage, occurring upon, in, or about the Premises including any buildings thereon and adjoining sidewalks, streets, and passageways, such insurance to afford immediate minimum protection at all times during the term of this Right-of-Way, with limits of liability in amounts approved from time to time by Grantor, but not less than ONE MILLION DOLLARS (\$1,000,000) in the event of bodily injury and death to any one or more persons in one accident, and not less than FIVE HUNDRED THOUSAND DOLLARS (\$500,000) for property damage. Such insurance shall also include coverage against liability for bodily injury or property damage arising out of the acts or omissions by or on behalf of Grantee by any invitee or any other person or organization, or involving any owned, non-owned, or hired automotive equipment in connection with Grantee's activities.

**29.1.2.** If and to the extent required by law, workers' compensation and employer's liability or similar insurance in form and amounts required by law.

**29.2.** All policies of insurance which this Right-of-Way requires Grantee to carry and maintain or cause to be carried or maintained pursuant to this Condition 29 shall be effected under valid and enforceable policies, in such forms and amounts as may, from time to time, be required under this Right-of-Way, issued by insurers of recognized responsibility. All such policies of insurance shall be for the mutual benefit of Grantor and Grantee. Each such policy shall provide that any losses shall be payable notwithstanding any act or failure to act or negligence of Grantee or Grantor or any other person; provide that no cancellation, reduction in amount, or material change in coverage thereof shall be effective until at least sixty (60) days after receipt by Grantor of written notice thereof; provide that the insurer shall have no right of subrogation against Grantor; and be reasonably satisfactory to Grantor in all other respects. In no circumstances will Grantee be entitled to assign to any third party rights of action which Grantee may have against Grantor. The foregoing notwithstanding, any cancellation of insurance coverage

based on nonpayment of the premium shall be effective after fifteen (15) days written notice to Grantor. Grantee understands and agrees that cancellation of any insurance coverage required to be carried and maintained by Grantee under this Condition 29 will constitute a failure to comply with the terms of the Right-of-Way.

**29.3.** Grantee shall deliver or cause to be delivered upon execution of this Right-of-Way (and thereafter not less than fifteen (15) days prior to the expiration date of each policy furnished pursuant to this Condition 29) to Grantor a certificate of insurance evidencing the insurance required by this Right-of-Way.

### **30. ENTIRE AGREEMENT**

**30.0.** It is expressly understood and agreed that this written instrument embodies the entire agreement between the Parties regarding the use of the Premises by the Grantee, and there are no understandings or agreements, verbal or otherwise, between the Parties except as expressly set forth herein.

### **31. CONDITION AND PARAGRAPH HEADINGS**

**31.0.** The headings contained in this Right-of-Way and its Attachments are to facilitate reference only and shall not in any way affect the construction or interpretation hereof.

### **32. RESERVED**

**32.0.** Reserved.

**IN WITNESS** whereof, I have hereunto set my hand by authority of the Secretary of the Air Force, this \_\_\_\_\_ day of \_\_\_\_\_, 200\_.

THE UNITED STATES OF AMERICA,  
by the Secretary of the Air Force

Right-of-Way No. \_\_\_\_\_

BY: \_\_\_\_\_

This Right-of-Way is also executed by Grantee this \_\_\_\_\_ day of \_\_\_\_\_, 200\_.

***(Name of Organization)***

\_\_\_\_\_  
(Title)

## **ATTACHMENTS**

### **ATTACHMENT 1**

#### **A. Safety and Security**

Grantee shall conform to all safety and security requirements and regulations applicable to Grantee's activity on the Installation. Grantee shall exercise extreme caution when performing work in or near family housing areas.

#### **B. Personnel**

Grantee shall employ competent supervisory, administrative, and direct labor personnel to accomplish the work allowed by this Right-of-Way. Grantee shall not hire off-duty Air Force engineering personnel or any other person whose employment would result in a conflict of interest or would otherwise violate The Joint Ethics Regulation, DoD Directive 5500.7-R. When speaking, understanding, and reading safety, security, health, and environmental warnings are an integral part of the duties of an employee of Grantee, Grantee shall only utilize employees on the Premises who can fluently speak, understand, and read the English language.

#### **C. Work Standards**

Grantee shall construct, install, repair, and maintain its property in a safe, thorough, and reliable manner and in conformance with applicable federal regulations and national professional codes. If Grantee owns or operates a utility system off the Premises but connected to the utility system on the Premises, it will apply at a minimum the same standards of construction, installation, repair, and maintenance it applies to its system off the Premises to its system on the Premises.

#### **D. Professionalism**

Grantee shall conduct all of its business on the Installation in a professional and courteous manner. Grantee's employees shall present a neat appearance and be readily recognizable as Grantee's employees. All vehicles of Grantee, while on the Installation, shall be readily identifiable as belonging to Grantee.

#### **E. Permits**

Grantee shall obtain a written excavation permit from said officer before commencing any digging or excavation on the Installation. Additional to the requirements of this Right-of-Way, the excavation permit will contain requirements normally applied to similar excavation work on the installation. Said officer will notify Grantee as to reasonable time periods for applying for an excavation permit. Grantee must submit its Construction Hazardous Materials Management Plan to said officer for review before any construction begins.

#### **F. Other Requirements**

Grantee will ensure compliance with other applicable requirements, including, but not limited to, compliance with Part 989 of Title 32 of the Code of Federal Regulations, *Environmental Impact Analysis Process*, and applicable Air Force Instructions in the 32-



7000 series. Prior to operating communications devices on the Installation, Grantee shall obtain the approval of said officer as to frequency use. Grantee shall comply with the Installation's foreign object damage prevention program whenever it engages in activities on or around the flightlines or runways.

#### **G. Methods**

Excavation by backhoe is permitted, except:

- (1) Hand digging is required within 4 feet of existing utility systems, not owned by Grantee, indicated on the base drawings or otherwise brought to the attention of Grantee during the term of this Right-of-Way; and,
- (2) Hand digging is required in areas within 1 foot of buildings.

#### **H. Backfilling**

Backfilling of areas excavated and the void remaining at the location shall be accomplished with well-pulverized soil. During backfilling operations, each 12-inch layer of soil shall be compacted to a CE 55 density of at least 95 percent. Settling of backfill by jetting of water is not permitted. The top 4 inches of backfill material shall consist of a well-pulverized soil containing not less than 50 percent topsoil. Affected areas shall be seeded after backfilling.

#### **I. Open Excavations**

Open excavations shall be barricaded when Grantee personnel are not present in the immediate vicinity of the work site. Under no circumstances shall open excavations remain at the completion of the workday.

#### **J. Pavement Cuts**

Pavement cuts, where necessary, shall be made only after the approval of the location and circumstances by said officer. Traffic shall be maintained over at least half the width of the pavement, unless otherwise directed by said officer. Traffic barricades and warning lights to mark the excavation shall be provided by Grantee. The restored pavement shall be equal to or better than the original pavement and at least one-quarter inch greater in thickness than existing pavement.

#### **K. Dust Control**

Grantee shall maintain all excavations, embankments, stockpiles, access roads, and all other work areas free from excess dust to avoid causing a hazard or nuisance to base personnel and surrounding facilities. Approved temporary methods consisting of sprinkling, chemical treatment, light bituminous treatment or similar methods are permitted to control dust. Dust control shall be performed as the work proceeds and whenever dust nuisance or hazard occurs.

#### **L. Lawn Areas**

Lawn areas rutted by equipment or otherwise damaged shall be leveled by the addition of topsoil or otherwise repaired by tilling and leveling. These areas shall be seeded to match the existing vegetation or the vegetation that existed before damage.

**M. Seeding**

Damaged or backfilled areas shall be resodded or seeded and fertilized by Grantee to match the vegetation existing before the damage. Sod, seed, and fertilizer types and mixtures will be approved by said officer.

**N. Plant Control**

After obtaining the prior permission of said officer, Grantee may trim or remove plants and trees that pose a potential hazard to its utility system. In those areas where the plants or trees contribute to historic or esthetic values and trimming or removing them would be destructive of those values, Grantee may be prohibited from trimming or removing them. In all instances, plants or trees listed as threatened or endangered under applicable federal, state, interstate, or local law will not be harmed by the activities of Grantee.

**O. Cleanup**

After the work is completed, the work site shall be returned to its original state.

## **EXHIBITS**

### **EXHIBIT A—MAP OF PREMISES**

The map or maps attached as this Exhibit A show the known locations of the utility system. Portions of the utility system may not be fully shown on the map or maps. Any such failure to show the complete utility system on the map or maps shall not be interpreted as that part of the utility system being outside the Premises. The Premises are co-extensive with the entire linear extent of the utility system sold to Grantee, whether or not precisely shown on the map or maps attached hereto as this Exhibit A.

*[This exhibit would normally be a map or maps of the installation, showing the exact locations of the right-of-way. In the case of a utility system, it would probably be a map or maps of the installation with the linear extent of the utility system superimposed on it. Those portions of the utility system that can be definitely identified because they have defined perimeters, such as plants or water towers, should be clearly and exactly identified on the map or maps.]*

**EXHIBIT B—DESCRIPTION OF PREMISES****B.1. General Description of the Nature of the Utility System:****UTILITY SYSTEM DESCRIPTION:**

The utility system is composed of, without limitation, wells, well pumps, supporting emergency generator sets, water treatment equipment, chlorinators, water distribution mains, meters, booster station pumps, storage tanks, reservoirs, all related electrical controls, and computer hardware and software used to operate and control the production and delivery of water throughout the water distribution system.

**LATERAL EXTENT OF UTILITY SYSTEM RIGHT-OF-WAY:**

For pipe sizes of 24 inches in diameter or less, 26-feet-wide, extending 13 feet on each side of the utility line, as installed.

For pipe sizes greater than 24 inches in diameter, 50-feet-wide, extending 25 feet on each side of the utility line, as installed.

**UTILITY SYSTEM POINTS OF DEMARCATION:**

The point of demarcation is defined as the point on the utility system where ownership changes from the utility system owner to the facility owner. The table below identifies the general locations of these points with respect to the facility served.

Point of Demarcation	Applicable Scenario	Sketch
Water Meter or Backflow Device, or Valve (closest apparatus to the exterior of the structure)	Water meter, backflow device, or valve is located on the service line entering the structure within 25 feet of the exterior of the structure.	<p>The sketch shows a rectangular structure. A horizontal line representing the service line enters the structure from the right. Just outside the structure, on the right side, there is a circle with a cross inside, labeled 'Water Meter'. An arrow points to this meter with the label 'Point of Demarcation'. Above the service line, there is a horizontal line labeled 'Distribution Pipe' with an arrow pointing right. Below the service line, there is another horizontal line labeled 'Distribution Pipe' with an arrow pointing right. The service line is labeled 'Service Line' with an arrow pointing down to it.</p>
Point where the service line enters the structure	No water meter, backflow device, or valve exists on the service line entering the structure.	<p>The sketch shows a rectangular structure. A horizontal line representing the service line enters the structure from the right. An arrow points to the point where the service line enters the structure with the label 'Point of Demarcation'. Above the service line, there is a horizontal line labeled 'Distribution Pipe' with an arrow pointing right. Below the service line, there is another horizontal line labeled 'Distribution Pipe' with an arrow pointing right. The service line is labeled 'Service Line' with an arrow pointing down to it.</p>

**UNIQUE POINTS OF DEMARCATION:**

The following table lists anomalous points of demarcation that do not fit any of the above scenarios.

Building No.	Point of Demarcation Description
<i>[/“None” if appropriate/]</i>	<i>Text description of point of demarcation</i>
	<i>“User Note: Examples may include high security area, weapons storage, irrigation systems, fire suppression systems, etc. Ensure that where this utility system will join to another utility system which has also been privatized, there is a clean point of demarcation so that there is no overlap of property being sold and the Air Force does not end up owning some small portion of system between two privatized systems.”</i>

## B.2. General Description of the Areal Extent of the Utility System:

*[This portion of the Exhibit would normally be metes and bounds. In this case, it is probably impractical to give the metes and bounds of the entire utility system. Consequently, this portion of the Exhibit should provide a description of the utility system using other information such as references to streets, buildings, or other identifiable facilities or structures to provide location and extent.]*

## B.3. Description of Restricted Access Areas Under Condition 22.2:

Description	Facility #	State Coordinates	Other Information
Water Tower			
<i>“User Note: This portion of the Exhibit deals with those areas of the utility system that require restricted access, such as plants and water towers. These areas are likely to be fenced or otherwise controlled. They may vary in size but they generally have the same characteristics—they allow few, if any, compatible uses and require controlled access. These areas of the utility system that can be definitively identified because they have defined perimeters, such as plants and water towers, should have metes and bounds or equivalent identification.”</i>			

Right-of-Way No. \_\_\_\_\_

**EXHIBIT C—PHYSICAL CONDITION REPORT**

*[Insert the Physical Condition Report here, or, if it is a separate document or format (e.g., videotape), incorporate it by appropriate reference (e.g., title and date). The extent and detail of the Physical Condition Report is a determination of the installation.]*

**EXHIBIT D—ENVIRONMENTAL BASELINE SURVEY**

***Alternative 1—The Air Force has determined an EBS is not necessary. Insert:***

The Air Force has determined that it is not required to conduct an EBS in regard to the sale of this utility system.

***Alternative 2—An EBS was performed after the sale. Insert:***

The EBS conducted by the Grantee, to the satisfaction of Grantor in accordance with Condition 19, after the sale of the utility system and identified by title and date in an exchange of notices between Grantor and Grantee is hereby incorporated by this reference.

***Alternative 3—An EBS was performed prior to the sale. Insert:***

In accordance with Condition 19, the EBS titled \_\_\_\_\_ and dated \_\_\_\_\_ is hereby incorporated by this reference.